

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	G. David Jang
Application No.:	10/723644
Filed:	November 26, 2003
For:	Intravascular Stent and Assembly
Examiner:	Vy Q. Bui
Group Art Unit:	3773

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Docket No.: S63.2B-11280-US01

Request for Reconsideration of Patent Term Adjustment, 37 C.F.R. § 1.705

The patentee hereby requests reconsideration, under 35 U.S.C. § 154(b), of the Determination of Patent Term Adjustment (PTA) made by the Director as indicated on the Determination of Patent Term Adjustment form mailed on February 22, 2010.

This Request pertains to the calculation of the B type delay (three year delay days). Applicant is submitting this Request at this time rather than subsequent to the issue notification. This is believed to be proper because the B type delay days are calculable at present since an RCE was filed in this application subsequent to the three year date.

Determination of Patent Term Adjustment

As indicated on the Determination of Patent Term Adjustment form, attached hereto, the adjustment to patent term is 1200 days. Also attached is the PAIR record showing the basis for this determination, which is believed to be incorrect.

The above referenced application was filed on November 26, 2003 and so is entitled to the benefit of the current version of 35 U.S.C. § 154. The PTA determination fails to follow the calculation method required by law as determined in *Wyeth v. Kappos*, 09-1120 (Fed. Cir. 2010), which is controlling law for the issues presented herein.

This Application for PTA constitutes a request that the patent term adjustment be made in accordance with the determination method described in the *Wyeth* case.

- (1) This request is accompanied by the fee set forth in 37 CFR § 1.18(e).
- (2) This request is being timely filed before payment of the issue fee as required under 37 C.F.R. § 1.705(b). This request can be filed prior to the issuance of the patent as the “three year” delay period ended at the time a request for continued examination was filed. Applicant submits this request prior to issuance in order to preserve Applicant’s right to a recalculation of the adjustment period since the requested adjustment is unaffected by the date of issuance.

- (3) Statement of the facts involved:

- (i) The correct patent term adjustment and the basis under 37 CFR § 1.702 for the adjustment is as follows:

USPTO delay days to the issuance of the first Office Action as indicated on PAIR	+ 1164
Other delay days post-first Office Action as indicated by PAIR	+ 36
Total USPTO delay days as indicated by PAIR	= 1200
Applicant’s delay days as indicated on PAIR	- 0
Non-overlapping three year days	+ 237
Correct Adjustment	= 1437

- (ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are explained as follows:

The Office calculation of 152 days fails to properly include all of the USPTO delay days. As *Wyeth* establishes, this is improper. Applicant is entitled to an additional adjustment to the patent term based on the USPTO delay subsequent to the three year date (11/26/2006) and ending on the date that a first RCE was filed (04/13/2009).

The USPTO delayed **1164** days between the 14 month date (1/26/2004) and the mailing date of the first Office Action (04/4/2008), as indicated on PAIR.

The total USPTO delay days, as indicated by PAIR, is 1200.

Applicant had 0 delay days as indicated by PAIR.

As such, PAIR indicates the PTA to be 1200.

However:

There were 237 non-overlapping days between the 3 year date (11/26/2006) and the date the first RCE was filed (04/13/2009). None of those days are accounted for above as USPTO delay.

Applicant is entitled to an additional 237 days beyond the calculation on PAIR to account for the delays between the 3 year date (11/26/2006) and the date the first RCE was filed (04/13/2009).

The USPTO delayed 1200 days as indicated by PAIR, the applicant delayed 0 days as indicated by PAIR and is entitled to 237 more days. Thus, the total adjustment that should have been shown in the Determination of Patent Term Adjustment is 1437 days (1200 – 0 + 237 = 1437).

(iii) The patent is not subject to a terminal disclaimer.

(iv) (A) Applicant has included herewith a copy of the print-out from the USPTO's PAIR Patent Term Adjustment page for the above file. Applicant has not verified the USPTO's determination but accepts it for the purposes of this petition.

All items required under 37 C.F.R. § 1.705 having been provided herein, the Applicant requests that the Patent Term Adjustment be corrected to show an adjustment of 1437 days.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: April 27, 2010

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Patent Term Adjustment			
Filing or 371(c) Date:	11-26-2003	USPTO Delay (PTO) Delay (days)	
Issue Date of Patent:	-	Three Years	
Pre-Issue Petitions (days)	-	Applicant Delay (APPL) Delay (days)	
Post-Issue Petitions (days)	-	Total Patent Term Adjustment (days)	1200
USPTO Adjustment (days):	-	Explanation Of Calculation	?
Patent Term Adjustment History			
Date	Contents Description	PTO(Days)	APPL(Days)
02-22-2010	Mail Notice of Allowance	31	
02-18-2010	Document Verification	9	
02-18-2010	Notice of Allowance Data Verification Completed	4	
01-19-2010	Examiner's Amendment Communication	4	
11-04-2009	Date Forwarded to Examiner	4	
09-22-2009	Response after Non-Final Action	4	
06-25-2009	Mail Non-Final Rejection		
06-22-2009	Non-Final Rejection		
04-17-2009	Date Forwarded to Examiner		
04-17-2009	Date Forwarded to Examiner		
04-13-2008	Request for Continued Examination (RCE)		
04-17-2009	Disposition for RCE (CPA/R129)		
04-13-2009	Workflow - Request for RCE - Begin		
03-24-2009	Mail Advisory Action (PTOL-303)		
03-23-2009	Mail Examiner Interview Summary (PTOL-413)		
03-23-2009	Advisory Action (PTOL-303)		
03-19-2009	Examiner Interview Summary Record (PTOL-413)		
03-14-2009	Date Forwarded to Examiner		
02-23-2009	Amendment after Final Rejection		
01-15-2009	Mail Final Rejection (PTOL-326)		
01-14-2009	Final Rejection		
10-23-2008	Date Forwarded to Examiner		
10-21-2008	Response after Non-Final Action		
08-19-2008	Mail Non-Final Rejection		5
08-19-2008	Non-Final Rejection		
02-02-2004	Information Disclosure Statement considered		
06-13-2003	Information Disclosure Statement considered		

10-25-2005	Information Disclosure Statement considered	
06-16-2008	Date Forwarded to Examiner	
04-30-2008	Response to Election / Restriction Filed	
04-04-2008	Mail Restriction Requirement	11164
03-31-2008	Requirement for Restriction / Election	§
10-26-2007	Case Docketed to Examiner in GAU	§
05-05-2006	Case Docketed to Examiner in GAU	§
04-25-2005	Case Docketed to Examiner in GAU	§
04-25-2006	IPW TSS Processing by Tech Center Complete	§
02-13-2005	Miscellaneous Incoming Letter	§
10-25-2005	Information Disclosure Statement (IDS) Filed	§
10-25-2005	Information Disclosure Statement (IDS) Filed	§
12-20-2005	Miscellaneous Incoming Letter	§
06-13-2005	Reference capture on IDS	§
06-13-2005	Information Disclosure Statement (IDS) Filed	§
06-13-2005	Information Disclosure Statement (IDS) Filed	§
01-04-2005	Incoming Letter Pertaining to the Drawings	§
02-02-2004	Reference capture on IDS	§
02-02-2004	Information Disclosure Statement (IDS) Filed	§
02-02-2004	Information Disclosure Statement (IDS) Filed	§
03-29-2004	Application Return from OIPE	§
03-30-2004	Application Is Now Complete	§
03-29-2004	Application Return TO OIPE	§
03-29-2004	Application Return from OIPE	§
03-29-2004	Application Return TO OIPE	§
03-29-2004	Application Return from OIPE	§
03-29-2004	Application Is Now Complete	§
02-02-2004	Additional Application Filing Fees	§
02-02-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115. Oath of the Applic	§
01-20-2004	Notice Mailed—Application Incomplete—Filing Date Assigned	§
01-16-2004	Pre-Exam Office Action Withdrawn	§

01-16-2004	Pre-Exam Office Action Withdrawn	§
01-16-2004	Application Return TO OIPE	§
01-16-2004	Application Dispatched From OIPE	§
01-16-2004	Application Is Now Complete	§
01-12-2004	Cleared by OIPE CSR	§
01-02-2004	IPW Scan & PACR, Auto Security Review	§
11-26-2003	Initial Exam Team in	§